

FILED*06 MAR 23 11:13 USDC-ORP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OTIS RANDELL BYRD, JR.,

Civ. No. 05-970-JE

Petitioner,

**ORDER DISMISSING HABEAS
CORPUS PETITION**

vs.

STATE OF OREGON,

Respondent.

This matter having come before the Court on the motion of the Petitioner to voluntarily dismiss his habeas corpus petition,

IT IS HEREBY ORDERED that the Petition for a Writ of Habeas Corpus is dismissed without prejudice. In the event that the decision in *Blakely v. Washington*, 124 S.Ct. 2531 (2004), is later made retroactive to cases on collateral review, Petitioner has leave to reopen this case only as to the *Blakely* issues, and the limitations period shall be deemed tolled from June 23, 2005, until sixty days after the date of the decision rendering *Blakely* retroactively

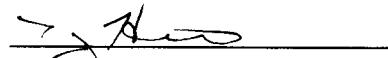
applicable. If *Blakely* is made retroactive and the Petitioner moves to reopen this case during the above-referenced 60-day period, Petitioner may also amend the Petition as of right so as to properly plead all *Blakely*-based claims in this Court.

IT IS SO ORDERED this 22 day of March, 2006.



The Honorable John Jelderks
U.S. District Magistrate Judge

Submitted by:



Thomas J. Hester
Attorney for Petitioner

Lynn David Larsen (by consent)
Attorney for Respondent

CERTIFICATE OF SERVICE